

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patricia Schnupp	Team: Team # 4	CCRB Case #: 200918380	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 11/27/2009 12:31 AM	Location of Incident: Inside of § 87(2)(b)	Precinct: 77	18 Mo. SOL 5/27/2011	EO SOL 5/27/2011	
Date/Time CV Reported Mon, 11/30/2009 4:05 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/30/2009 4:05 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Mark Desimone	00281	923755	077 PCT
2. POM Jonathan Murray	00609	944840	077 PCT
3. SGT Raymond Kwong	03627	932870	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Mark Desimone	Discourtesy: PO Mark Desimone spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)
B.POM Mark Desimone	Force: PO Mark Desimone used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Mark Desimone	Force: PO Mark Desimone struck § 87(2)(b) with a blunt object.	§ 87(2)(b)
D.POM Jonathan Murray	Force: PO Jonathan Murray used physical force against § 87(2)(b)	§ 87(2)(b)
E.SGT Raymond Kwong	Discourtesy: Sgt. Raymond Kwong spoke obscenely and rudely to § 87(2)(b)	§ 87(2)(b)

Case Summary

On November 30, 2009 § 87(2)(b) called the CCRB to file a complaint. At approximately midnight on November 27, 2009 § 87(2)(b) called the police to her residence at § 87(2)(b) in Brooklyn to resolve a domestic dispute between her son § 87(2)(b) and his girlfriend § 87(2)(b). PO Mark Desimone and PO Jonathan Murray of the 77th Precinct responded to this call. The following allegations resulted from the officers' actions.

- **Allegation A: Discourtesy:** PO Mark Desimone spoke obscenely and rudely to § 87(2)(b) § 87(2)(g)
- **Allegation B: Force:** PO Mark Desimone used physical force against § 87(2)(b) § 87(2)(b), § 87(2)(g)
- **Allegation C: Force:** PO Mark Desimone struck § 87(2)(b) with a blunt object. § 87(2)(g)
- **Allegation D: Force:** PO Jonathan Murray used physical force against § 87(2)(b) § 87(2)(g)
- **Allegation E: Discourtesy:** Sgt. Raymond Kwong spoke obscenely and rudely to § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b) (encl. 5A-5C)

- § 87(2)(b) is a 5'6" § 87(2)(b) old 200lbs black female with gray hair and brown eyes.

On November 27, 2009 at approximately 12:00 a.m. § 87(2)(b) called 911 on her son § 87(2)(b) and his girlfriend § 87(2)(b) because they argued loudly § 87(2)(b). They calmed down before the police arrived.

§ 87(2)(b) was on the stoop when the police arrived. § 87(2)(b) lives in a three family home. She lives on the § 87(2)(b) floor and her son lives in the § 87(2)(b) apartment. PO Murray and PO Desimone arrived and asked § 87(2)(b) where her son was. She told the officers her son was § 87(2)(b) and she let them into the building. PO Murray and PO Desimone knocked on the § 87(2)(b) door and § 87(2)(b) and § 87(2)(b) came up to the § 87(2)(b) floor hallway. § 87(2)(b) stood behind the officers closer to the front door. § 87(2)(b) tried to talk to the officers and PO Desimone repeatedly said "shut up bitch" and "shut up cunt" to her. PO Desimone slapped § 87(2)(b) in the face. PO Desimone then ripped a piece of the railing off the banister and hit § 87(2)(b) with it. When PO Desimone brought the piece of railing back to hit § 87(2)(b) a part of PO Desimone's body ran into § 87(2)(b) which caused her to fall to the ground. § 87(2)(b) yelled at PO Desimone for knocking his mother down. PO Desimone dragged § 87(2)(b) to the ground and hit § 87(2)(b) with the piece of the railing several times. § 87(2)(b) stated PO Desimone struck § 87(2)(b) "all over his body" with the piece of banister but could not specify where § 87(2)(b) was struck. PO Murray handcuffed § 87(2)(b). PO Murray and PO Desimone picked § 87(2)(b) up and pulled him out of the building by his handcuffs. § 87(2)(b) was also handcuffed and taken to the 77th Precinct.

Victim: § 87(2)(b)

- § 87(2)(b) is a 6'1" 275lbs § 87(2)(b) old black male with black hair and brown eyes.

Statements to Medical Personnel (encl. 12A-12DD)

§ 87(2)(b) complained to EMS of pain to his right shoulder, left forearm, face and legs. § 87(2)(b) informed EMS that the police pushed his mother down and he “went wild” and the police attacked him, which caused the aforementioned injuries.

CCRB Testimony (encl. 6A-6F)

On November 27, 2009 at approximately midnight § 87(2)(b) and his girlfriend § 87(2)(b) argued in the § 87(2)(b) apartment of his mother, § 87(2)(b)'s home at § 87(2)(b) in Brooklyn. § 87(2)(b) and § 87(2)(b) both had a few drinks during the day but were not drunk during this incident.

§ 87(2)(b) and § 87(2)(b) came up § 87(2)(b) because the police called for them. PO Desimone and PO Murray were in the hallway on the § 87(2)(b) floor. § 87(2)(b) was behind the police officers. § 87(2)(b) and § 87(2)(b) continued arguing. PO Desimone repeatedly said “shut the fuck up bitch” to § 87(2)(b). § 87(2)(b) and § 87(2)(b) tried to walk past the officers. PO Desimone grabbed § 87(2)(b)'s shoulder and § 87(2)(b) moved his shoulder away. § 87(2)(b) screamed at PO Desimone and he pushed § 87(2)(b) in the chest causing her to fall backwards. § 87(2)(b) became angry because § 87(2)(b) was pregnant. § 87(2)(b) got up off the ground and yelled to PO Desimone “I’m going to press charges on you because I am fucking pregnant.” PO Desimone said “shut the fuck up bitch” and pushed her to the ground again. § 87(2)(b) walked towards PO Desimone and PO Murray grabbed one of his arms and tried to handcuff him but could not because he pulled his arms away and continued to walk towards PO Desimone. PO Murray pushed § 87(2)(b) face first onto the ground. PO Desimone struck § 87(2)(b) in back of the head and body with a hard object and punched § 87(2)(b) in the face and body several times before he was eventually handcuffed. While handcuffing § 87(2)(b) the officers pulled § 87(2)(b)'s arm back so far that it caused § 87(2)(b)'s left shoulder to pop out of its socket. § 87(2)(b) saw PO Desimone push his mother § 87(2)(b) to the ground. This angered § 87(2)(b) and he attempted to get up even though he was handcuffed. PO Desimone continued punching § 87(2)(b) in the head and body. Other officers arrived and they walked § 87(2)(b) out of the house. At some point during this interaction a piece of the railing from the banister came off. § 87(2)(b) did not know how that happened.

The officers took § 87(2)(b) to the 77th Precinct. He yelled repeatedly that he needed to go to a hospital. Sgt. Kwong came to the cells and told § 87(2)(b) to “shut the fuck up.” § 87(2)(b) and § 87(2)(b) were not in the same cells and there were no other prisoners present. Eventually an ambulance came to the 77th Precinct and took § 87(2)(b) to § 87(2)(b). § 87(2)(b) was diagnosed with a dislocated shoulder and his shoulder was popped back into place.

Attempts to Contact Civilians

The CCRB unsuccessfully attempted to obtain a phone statement from § 87(2)(b) regarding this incident 5 times between December 4 and March 4, 2010. Two letters were also sent to her home during this time period. § 87(2)(b) also missed two previously scheduled appointments on January 27 and February 17, 2010 without calling to cancel or reschedule. To date § 87(2)(b) has not made any attempts to contact the CCRB.

NYPD Statements:

Subject Officer: PO MARK DESIMONE (encl. 8A-8B)

- *PO Desimone is a 6'1" 210lbs white male with brown hair and brown eyes. On November 27, 2009 PO Desimone was assigned to sector patrol with PO Murray. Both officers were in uniform and assigned to marked RMP 5043. PO Desimone worked from 11:15 p.m. to 7:50 a.m. PO Desimone was interviewed at the CCRB on May 12, 2010.*

OLBS (encl. 13A-13D)

§ 87(2)(b) § 87(2)(b) elbowed PO Desimone in the face while he tried to resolve a dispute. When PO Desimone attempted to subdue § 87(2)(b) he punched PO Desimone in the face, the fell to the ground, and then kicked PO Desimone in the face. § 87(2)(b) also attempted to remove PO Murray's gun from its holster.

§ 87(2)(b) § 87(2)(b) punched PO Desimone in the face and head several times while he tried to subdue her. § 87(2)(b) attempted to remove PO Desimone's firearm and did remove PO Desimone's expandable baton and attempted to strike PO Desimone with it.

PO Desimone and PO Murray responded to a family dispute at § 87(2)(b) at approximately midnight on November 27, 2009. The officers encountered § 87(2)(b) sitting on the stoop. She informed the officers her son § 87(2)(b) and his girlfriend § 87(2)(b) were arguing § 87(2)(b) and that she wanted § 87(2)(b) to leave. PO Desimone and PO Murray entered the building. As they entered PO Desimone went to the top of the § 87(2)(b) stairs and told the arguing couple to come upstairs, which they did. PO Desimone told § 87(2)(b) to step outside with him and get some air. § 87(2)(b) said "Fuck you get the fuck out of my house." PO Desimone grabbed the back of § 87(2)(b)'s arm to escort him out of the building. § 87(2)(b) elbowed PO Desimone in the face. PO Desimone attempted to grab § 87(2)(b)'s arms and he flailed his arms. PO Murray came over and tried to grab § 87(2)(b)'s arms. § 87(2)(b) and § 87(2)(b) both tried to stop the officers from handcuffing § 87(2)(b) physically grabbed PO Murray and § 87(2)(b) tried to get in between the officers and her son.

During this struggle to handcuff § 87(2)(b) the officers and § 87(2)(b) fell sideways into the banister leading upstairs, causing a piece of the banister to break off. § 87(2)(b) then fell backwards onto the floor, with PO Murray closest to § 87(2)(b)'s head and PO Desimone closest to § 87(2)(b)'s feet. § 87(2)(b) kicked his feet and struck PO Desimone in the face, which later caused a black eye. PO Desimone was dazed and § 87(2)(b) somehow moved over to PO Desimone's side and attempted to grab his asp. PO Desimone smacked § 87(2)(b) he did not remember where, to get her away. § 87(2)(b) came back and grabbed PO Desimone's asp off his belt but was unable to expand it. PO Desimone smacked the asp out of § 87(2)(b)'s hand. During this time PO Murray and PO Desimone were able to grab § 87(2)(b)'s arms and handcuff him. PO Desimone might have punched § 87(2)(b) but he was not sure. PO Desimone then turned his attention to § 87(2)(b) PO Desimone pushed § 87(2)(b) into the wall by her back and handcuffed her. PO Desimone put over a 10-85 during this incident but officers did not arrive until everyone was handcuffed. PO Desimone did not use his asp during this incident nor did his partner. PO Desimone did not hit § 87(2)(b) with a piece of the broken banister nor did his partner. PO Desimone did not curse during this incident nor did PO Murray. PO Desimone was driven directly to § 87(2)(b) and did not interact with § 87(2)(b) again. § 87(2)(b)

Subject Officer: PO JONATHAN MURRAY (encl.9A-9B)

- *PO Murray is a 5'8" 170lbs white male with light brown hair and brown eyes. On November 27, 2009 PO Murray was assigned to sector patrol with PO Desimone. Both officers were in uniform and assigned to a marked RMP. PO Murray worked from 11:15 p.m. to 7:50 a.m. PO Murray was interviewed at the CCRB on May 12, 2010.*

§ 87(2)(g)

PO Murray testified that PO Desimone was kicked in the face but did not mention that he was elbowed in the face. PO Murray admitted to punching § 87(2)(b) in the face several times during the struggle to handcuff him because § 87(2)(b) tried to pull PO Murray's gun out of his holster. PO Murray processed the arrest paperwork and stayed at the 77th Precinct with § 87(2)(b). PO Murray did not hear Sgt. Kwong curse at § 87(2)(b) while at the stationhouse.

Subject Officer: SGT. RAYMOND KWONG (encl. 11A-11B)

- *Sgt. Kwong is a 5'5" 130lbs Asian male with black hair and brown eyes. On November 27, 2009 Sgt. Kwong was assigned to the desk at the 77th Precinct. Sgt. Kwong was in uniform and did not have a partner. Sgt. Kwong worked from 11:15 p.m. on November 26 to 8:02 a.m. on November 27, 2009. Sgt. Kwong was interviewed at the CCRB on July 22, 2010.*

Sgt. Kwong did not recall § 87(2)(b). He did not acknowledge that he made the command log entry noting § 87(2)(b) and § 87(2)(b)'s arrest. Sgt. Kwong did not recognize a photograph of § 87(2)(b). Sgt. Kwong denied interacting with § 87(2)(b) and did not curse at § 87(2)(b) while he was at the 77th Precinct.

Medical Records (encl. 12A-12DD)

§ 87(2)(b) was diagnosed with a dislocated left shoulder. A dried up blood clot was also noted in his left nostril.

NYPD Documents

OLBS (encl. 13A-13D)

§ 87(2)(b)

§ 87(2)(b)

Roll Call (encl. 17A)

Sgt. Raymond Kwong was the tour 1 desk officer on November 27, 2009.

Command Log (encl. 15A)

§ 87(2)(b) was logged into the command log at 1:40 a.m. § 87(2)(b)'s condition was apparently normal. § 87(2)(b) was transported to § 87(2)(b) via ambulance at § 87(2)(b) in leg shackles.

Prisoner Holding Pen Roster (encl. 17A)

§ 87(2)(b) was the only other prisoner at the 77th Precinct while § 87(2)(b) was held there before he was removed. § 87(2)(b)

Summons/Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

- § 87(2)(b) have not filed a Notice of Claim with the City of New York as of July 28, 2010 with regard to the incident.

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB History (encl. 3A)

- This is the first CCRB complaint filed by § 87(2)(b)

Subject Officer(s) CCRB History

- PO Murray has been a member of the service for 3 years and there are no substantiated CCRB allegations against him (encl. 2A-2C).
- PO Desimone has been a member of the service for 11 years and there are 2 substantiated CCRB allegations against him. On September 15, 2004 panel 8C substantiated vehicle search and discourtesy allegations in case number 200400081. The Deputy Commissioner of Trials dismissed the charges (encl. 2A-2C).
- Sgt. Kwong has been a member of the service for 7 years and there is 1 substantiated CCRB allegation against him. On May 26, 2010 panel 5A substantiated a frisk allegation in case number 200908940. The NYPD disposition is currently pending.

Conclusion

Identification of Subject Officers

- PO Desimone was the arresting officer in this complaint and PO Murray was his partner. Both officers confirmed their involvement in this incident during their CCRB testimony.
- § 87(2)(b) described the officer that cursed at him at the 77th Precinct stationhouse as Asian. According to the roll call Sgt. Kwong was the only Asian male officer with a stationhouse assignment on the date of this incident.

Allegations Not Pled

§ 87(2)(b) stated she fell during this incident due to inadvertent contact with PO Desimone while he attempted to apprehend § 87(2)(b) and § 87(2)(b). § 87(2)(b) did not state this was intentional or excessive. § 87(2)(g)

Investigative Findings and Recommendations

Allegation A: Discourtesy: PO Mark Desimone spoke obscenely and rudely to § 87(2)(b)

Allegation B: Force: PO Mark Desimone used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation C: Force: PO Mark Desimone struck § 87(2)(b) **with a blunt object.**

§ 87(2)(b) claimed he was struck in the back of his head and body with an unidentified blunt object and his mother § 87(2)(b) claimed he was beaten with part of a wooden banister but could not specify where he was struck. PO Desimone and PO Murray denied striking § 87(2)(b) with anything but their fists. § 87(2)(b) told medical personnel he was assaulted but did not mention being struck with a blunt object. § 87(2)(b)'s medical records did not note any injuries to his head or body other than his dislocated shoulder, which he sustained while being handcuffed. ■

§ 87(2)(b), § 87(2)(g)

Allegation D: Force: PO Jonathan Murray used physical force against § 87(2)(b)

§ 87(2)(b) stated it was PO Desimone who punched him in the head and body. However, PO Murray testified that he was the officer that actually punched § 87(2)(b) in the face. § 87(2)(b) admittedly resisted arrest by refusing to be handcuffed and attempting to get up after being handcuffed. Both officers testified that this was a chaotic scene in which they encountered two violently resisting people. PO Murray testified that he punched § 87(2)(b) because he attempted to grab his weapon, which is documented in § 87(2)(b)'s arrest report. Furthermore, § 87(2)(b)'s arrest report noted that § 87(2)(b) also kicked PO Desimone. § 87(2)(b), § 87(2)(g)

■ According to the Scale of Escalating Force (encl. 1A) an officer can use his fists when they are threatened with physical assault. § 87(2)(b), § 87(2)(g)

Allegation E: Discourtesy: Sgt. Raymond Kwong spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) claimed Sgt. Kwong told him to "shut the fuck up." Sgt. Kwong denied this, as did PO Murray who was present at the stationhouse. § 87(2)(b), § 87(2)(g)

Team: _____

:

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date